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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.606(b),)
Table of Allotments,)
Television Broadcast Stations)
(Boynton Beach, Florida))
)

MM Docket No. _____
RM No. _____

DOCKET FILE COPY ORIGINAL

To: The Chief, Allocations Branch,
Policy and Rules Division,
Mass Media Bureau

PETITION FOR RULE MAKING

Pappas Telecasting of America, a California Limited Partnership
("Pappas"), by counsel and pursuant to Section 1.401 of the Commission's Rules,
hereby requests the Commission to institute a rule making proceeding for the purpose
of amending the Table of Allotments for Television Broadcast Stations, Section
73.606(b) of the Commission's Rules, in order to allot Channel 15 to Boynton Beach,

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Florida, as that community's first local television service. ^{1/} Pappas proposes to amend Section 73.606(b) of the Commission's rules as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Boynton Beach, Florida	- - -	15

In support of this request, the following is stated:

1. The city of Boynton Beach, Florida, is an incorporated community with a 1990 U.S. Census population of 46,194. As of January 1, 1995, its population was estimated to be 53,100. ^{2/} Boynton Beach has its own post office and six zip codes, and is served by at least one bank and hospital. The community also is served by the CSX Transportation Railroad and the Florida East Coast Railway Company.

^{1/} The proposed allotment of Channel 15 at Boynton Beach is within the freeze zone established by Advanced Television Systems and Their Impact on the Existing Television Service, 52 FR 28346 (published July 29, 1987) ("Freeze Order"). Accordingly, attached hereto is a request for waiver of the Freeze Order. As explained in greater detail therein, this petition is part of a series of rule making petitions and applications for new television stations, many of which request the Commission to waive its Freeze Order in order to permit the allotment of a new television channel and/or the acceptance of an application for a new television station in approximately 40 television markets.

^{2/} Source: Rand McNally Commercial Atlas & Marketing Guide, pp. 137, 293 (127th ed.) (1996), citing Sales and Marketing Management "1995 Survey of Buying Power."

2. The instant proposal does not meet the minimum distance criteria set forth in Sections 73.610 and 73.698 of the Commission's Rules with respect to Stations WCEU (TV), Channel 15 in New Smyrna Beach, Florida, and WFLX (TV), Channel 29 in West Palm Beach, Florida, respectively. However, the proposed allotment is based on Equivalent Distance Protection, which has been employed by the Commission in the past. See, e.g., Report and Order in MM Docket No. 20418, 81 FCC 2d 233, 259 (1980), recon. denied, 90 FCC 2d 160 (1982) (amending the Table of Allotments for Television Broadcast Stations to allot new VHF television broadcast station channels to Johnstown, Pennsylvania; Charleston, West Virginia; Knoxville, Tennessee; and Salt Lake City, Utah). As demonstrated in the attached engineering exhibit, Channel 15 can operate at Boynton Beach if the proposed station were to suppress its radiation toward New Smyrna Beach, Florida, to a maximum level of 39.95 kilowatts. A directional antenna will be utilized to provide the requisite protection to New Smyrna Beach, while still providing an effective radiated power of 1200 kilowatts over the community of Boynton Beach and the attendant service area.

3. With respect to Station WFLX (TV), the distance separations contained in Section 73.698 were designed to afford protections based upon the mixing of multiple signals that potentially could disturb the reception in television receivers available 20 years ago. However, television receiver technology has changed dramatically since the 1970's. Modern receivers rely on electronic tuning

using large-scale integrated circuits, varactors, and shielded oscillators. Accordingly, the attached engineering exhibit demonstrates that where two stations which are 14 channels apart are co-located, as proposed here, maintaining a power level of no less than 23 dB, as required by the Rules, will eliminate the need for a physical separation as provided for in Section 73.698.

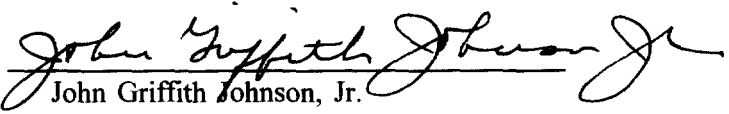
4. As stated above, the allotment of Channel 15 will provide Boynton Beach with a first local television service, which will promote the objectives of Section 307(b) of the Communications Act of providing a fair, efficient, and equitable distribution of television broadcast stations among the various States and communities. 47 U.S.C. §307(b). See National Broadcasting Co. v. U.S., 319 U.S. 190, 217 (1943) (describing goal of Communications Act to "secure the maximum benefits of radio to all the people of the United States"); FCC v. Allentown Broadcasting Co., 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to "secure local means of expression"). In addition, the proposed allotment will promote the second television allotment priority established in the Sixth Report and Order in Docket Nos. 8736 and 8975, 41 FCC 148, 167 (1952), of providing each community with at least one television broadcast station. The proposed allotment also will provide the opportunity for an additional network to serve the West Palm Beach - Ft. Pierce television market. Therefore, the allotment will serve the public interest.

5. Contemporaneously herewith, the petitioner is filing an application for a construction permit for the new facility, contingent upon the grant of the proposed allotment. In the event its application is granted, the petitioner will promptly construct the new facility.

WHEREFORE, in light of the foregoing, Pappas Telecasting of America, a California Limited Partnership, respectfully requests the Commission to grant this petition for rulemaking, amend the Table of Allotments for Television Broadcast Stations, and allot Channel 15 to Boynton Beach, Florida, as that community's first local television service.

Respectfully submitted,

**PAPPAS TELECASTING OF AMERICA,
A CALIFORNIA LIMITED PARTNERSHIP**

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July 24, 1996

REQUEST FOR WAIVER OF ATV "FREEZE"

INTRODUCTION

Pappas Telecasting of America, a California Limited Partnership ("Pappas" or "Petitioner"), respectfully requests the Commission to grant a waiver of its "Freeze Order" ^{1/} so that Pappas may petition to amend the Table of Allotments for Television Broadcast Stations, Section 73.606(b) of the Commission's Rules (the "Table of Allotments"), and so that Pappas may simultaneously apply for a construction permit for Channel 15 in Boynton Beach, Florida. In July 1987, the Commission adopted the Freeze Order, which temporarily fixed the Table of Allotments for 30 designated television markets and their surrounding areas (hereinafter "Freeze Zone"). ^{2/} The Freeze Order also proscribed construction permit applications for vacant television allotments in these areas. ^{3/}

^{1/} *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811, 1987 FCC LEXIS 3477 (July 17, 1987), 52 Fed. Reg. 28346 (1987) ("Freeze Order").

^{2/} The freeze zones are determined by the minimum co-channel separation requirements set forth in Section 73.610 of the Commission's Rules, and have radii ranging from 169.5 miles to 219.5 miles for UHF television broadcast stations, depending upon the region of the country in which the proposed station is to be located.

^{3/} Freeze Order at *2.

By its own terms, however, the Freeze Order envisions waivers "for applicants which provide compelling reasons why this freeze should not apply to their particular situations or class of stations." ^{4/} Although Boynton Beach falls within a Freeze Zone, "compelling reasons" exist for the Commission to waive the freeze.

I. FACTUAL BACKGROUND

This petition and accompanying waiver request are being filed contemporaneously with an application for a construction permit to bring Boynton Beach its first local television service. The applicant is an entity owned primarily by Harry Pappas, a well-established broadcaster. Simultaneously herewith, the Petitioner is filing similar applications in other communities -- many of which also require a waiver of the Freeze Order.

These petitions and accompanying applications are being filed in tandem with a series of other rule making

^{4/} *Id.* at *3. Of course, the FCC is always required to consider waiver requests and is required to grant a waiver when grant of the waiver would better serve the public interest than application of the underlying rule or policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

petitions and applications, which together cover many of the top 100 markets in which there are no full-power stations available to primarily affiliate with The WB Television Network ("The WB"), a network with which the applicants have existing affiliations. The WB has indicated a willingness to enter into affiliation agreements with these applicants in their respective communities, should they obtain a license. ^{5/}

To the extent these applicants are able to obtain any of these licenses, the community will also benefit by getting a first local television service, ^{6/} which will provide viewers in the community -- including children -- with the benefit of receiving another station's programming. And The WB will benefit, by taking another step toward achieving national penetration. ^{7/} While these benefits --

^{5/} We note, in this regard, that there is no commitment on any party's part to enter into such an agreement.

^{6/} Indeed, we must concede that this benefit will be achieved by grant of this waiver irrespective of whether the license is ultimately granted to any of these applicants.

^{7/} Establishing a nationwide network of affiliates is crucial, given that The WB's national advertisers currently require coverage of at least 80 percent of the country. The WB's over-the-air broadcast affiliates, however, currently cover only 65% of the country. Cynthia Littleton, WB, UPN rally the troops,
(continued...)

including The WB's interest in building a nationwide network -- will obviously be maximized if the Commission waives the Freeze Order in as many markets as are requested in these applications, the waiver request is not hinged upon an all-or-nothing response. Simply stated, the more markets the better; but each additional market will help.

II. GRANT OF THE WAIVER WILL SERVE THE PUBLIC INTEREST

As the Commission envisioned, in some cases the compelling reasons justifying a waiver will apply at the local level, while in other cases the compelling reasons will apply to a class of stations.^{8/} Here, there are compelling reasons at both the local and national level, making the grounds for a waiver particularly compelling.

7/(...continued)

Broadcasting & Cable, June 10, 1996, at 20. Although The WB's over-the-air coverage is supplemented with superstation WGN(TV)'s cable coverage by approximately 19 percent, this cable coverage is far from equivalent to over-the-air broadcast coverage. This is because one third of all households (approximately 35 million households) do not subscribe to cable, and instead rely upon free television as their sole access to the video marketplace.

8/ Freeze Order at *3.

At the local level, grant of the requested waiver would permit Boynton Beach, Florida to have a first local television service. At the national level, this petition and accompanying waiver request are part of a series of rule making petitions asking the Commission to allot new channels or to re-allot existing channels, the effect of which will be to create many new television stations -- and, correspondingly, more opportunities for a new network like The WB to obtain critical affiliates providing coverage -- in the top 100 markets. As set forth more specifically in the applications filed contemporaneously herewith, the stations will be owned by entities which have indicated their interest in affiliating their proposed new stations with The WB, a still-incipient, over-the-air television network that currently lacks full-power, primary affiliates in the communities specified in these applications. ^{2/}

A. GRANT OF THE REQUESTED WAIVER WILL ACHIEVE MARKET-SPECIFIC PUBLIC INTEREST BENEFITS

Grant of the requested waiver will serve the public interest by providing Boynton Beach, Florida with its

^{2/} Again, however, there is no commitment to affiliate with The WB, nor are there any penalties for failure to affiliate with The WB.

first local television service. The Commission has found already that a waiver of the Freeze Order was in the public interest, at least in part because the proposed television broadcast station channel re-allotment would provide a first local television service to the community in question. ^{10/} In that case, the Commission noted that the proposed re-allotment would promote one of the overarching priorities in the allotment of television channels: providing at least one local television broadcast station to every community.

^{11/}

In this case, the allotment of Channel 15 to Boynton Beach will promote this Commission objective and, at the same time, promote the statutory objective set forth in Section 307(b) of the Communications Act of 1934, as amended, of providing a fair, efficient, and equitable distribution of television broadcast stations among the

^{10/} Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Modesto and Ceres, California), 6 FCC Rcd 3613 (1991) (non-commercial, educational channel).

^{11/} Id.; see also Amendment of Section 3.606 of the Commission's Rules and Regulations; Amendment of the Commission's Rules, Regulations and Engineering Standards Concerning the Television Broadcast Service; Utilization of Frequencies in the Band 470 to 890 MCS for Television Broadcasting, 41 FCC 148, 167 (1952) ("Sixth Report and Order").

various States and communities. ^{12/} Grant of this waiver request is a necessary first step to bringing a first television station to this community. In and of itself, this presents a compelling justification for waiving the freeze.

**B. GRANT OF THE REQUESTED WAIVER WILL ACHIEVE NATIONWIDE
PUBLIC INTEREST BENEFITS**

Waiving the Freeze Order for this and for the other communities applied for in this series of rule making petitions and applications will also promote significant public-interest objectives on a national level. A waiver will advance the Commission's long-standing public-interest objective of fostering the growth of new national over-the-

^{12/} 47 U.S.C. § 307(b). See *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) (describing goal of Communications Act to "secure the maximum benefits of radio to all the people of the United States"); *FCC v. Allentown Broadcasting Co.*, 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to "secure local means of expression").

air television networks. ^{13/} And it will enhance broadcast diversity and competition in the local marketplace.

1. Grant Of the Requested Waiver Will Encourage the Development Of New National Television Networks

The Commission has long espoused a commitment to foster the ability of new networks to enter and compete in the television marketplace. As far back as 1941, when the Commission adopted its Chain Broadcasting rules, a primary goal of the Commission was to remove barriers that would inhibit the development of new networks. ^{14/} The Commission explained that the Chain Broadcasting rules were intended to "foster and strengthen broadcasting by opening

^{13/} See *Report On Chain Broadcasting*, Commission Order No. 37, Docket 5060 (May 1941) at 88 ("Report on Chain Broadcasting"); *Amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d 318, 333 (1970); *Fox Broadcasting Co. Request for Temporary Waiver of Certain Provisions of 47 C.F.R. § 73.658*, 5 FCC Rcd 3211, 3211 and n.9 (1990), (citing Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation* (Vol. 1 Oct. 1980)), waiver extended, 6 FCC Rcd 2622 (1991).

^{14/} *Report on Chain Broadcasting* at 88. Although the Chain Broadcasting rules were originally adopted for radio, they were applied to television in 1946. *Amendment of Part 3 of the Commission's Rules*, 11 Fed. Reg. 33 (Jan. 1, 1946).

up the field to competition. An open door to networks will stimulate the old and encourage the new." ^{15/}

The Commission has remained steadfast in its commitment to its goal of nurturing new networks. The history of the Commission's financial interest and syndication ("finsyn") rules is a case in point. Even as the regulation itself has changed over the last 25 years, the Commission has not wavered from the goal of nurturing new networks. In 1970, when it first adopted the finsyn rule, the Commission noted that "[e]ncouragement of the development of additional networks to supplement or compete with existing networks is a desirable objective and has long been the policy of this Commission." ^{16/} More than two decades later, when the Commission took action first to relax and later to eliminate the finsyn rule, it did so at the behest of the newest network entrant, Fox Broadcasting Company ("Fox"). Indeed, pending its review of the rule, the Commission granted Fox's request for a limited waiver of the rule. ^{17/} As Commissioner Duggan explained, "Fox has

^{15/} *Report on Chain Broadcasting* at 88.

^{16/} *Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d at 333.

^{17/} *Fox Broadcasting Co.*, 5 FCC Rcd at 3211 (1990).

been a bright and innovative force. The existence of a fourth network is certainly in the public interest. . . . Fox deserves to be encouraged." ^{18/} In 1995, in deciding to phase out the finsyn rule entirely, the Commission similarly evaluated the rule's impact on "[t]he overall business practices of emerging networks, such as Fox, in the network television and syndication business . . . [and] [t]he growth of additional networks, including the development of Fox and its position vis-à-vis the three major networks." ^{19/}

Appropriately, the Commission's goal of fostering new networks has not been limited to Fox. When the Commission first expanded its multiple ownership rule, it did so with the stated hope of fostering new networks. ^{20/}

^{18/} *Broadcasting & Cable*, May 7, 1990, ed., p. 28; accord, *Application of Fox Television Stations, Inc. for Renewal of License of Station WNYW-TV, New York, New York*, 10 FCC Rcd 8452, 8528-29 (1995) (Commissioner Quello stating in his concurring statement, "I believe . . . that the creation of the fourth network was a compelling public interest goal.").

^{19/} *Evaluation of the Syndication and Financial Interest Rules*, 10 FCC Rcd 12165, 12166 (1995).

^{20/} *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, 100 FCC 2d 17, 45 (1984) ("Multiple Ownership") (relaxing restrictions on multiple ownership advances "Commission's diversity (continued...)

In addition, the Commission has crafted rules and granted a variety of waivers designed to foster the development of new networks over the years. In 1967, for example, the Commission granted a waiver of the dual network rule to the American Broadcasting Company, Inc. ("ABC") -- the then-new network entrant -- in connection with ABC's four new specialized radio networks. Although operation of the four networks violated the dual network rule, the Commission nevertheless concluded that waiver of the rule was appropriate because ABC's proposal "merits encouragement as a new and imaginative approach to networking." ^{21/} The Commission explained that it was "of more than usual importance to encourage to the extent possible innovation and experimentation in the operation of networks." ^{22/} In 1981, the Christian Broadcasting Network was granted a limited waiver of both the prime-time-access rule and the

^{20/} (...continued)

goal by providing alternatives to the three television networks"). Although Fox was the first of these alternatives, there has never been, nor should there be, any notion that one alternative network was all that was needed.

^{21/} *Proposal of American Broadcasting Cos., Inc. to Establish Four New Specialized "American Radio Networks,"* 11 FCC 2d 163, 168 (1967).

^{22/} *Id.* at 165.

finsyn rule. ^{23/} The Commission reasoned that a waiver was appropriate because the rules were adopted in part to attempt to ensure the development and growth of other "lesser" organizations. The Commission followed the same line of reasoning in subsequently granting Home Shopping Network waivers of the dual network and prime-time-access rules. ^{24/} The Commission noted, for example, that simultaneous operation of two Home Shopping networks was "consistent with the Commission's goals of encouraging alternatives to traditional networking." ^{25/}

Most recently, the Commission expressed its continued interest in fostering new networks in proposing to amend various network/affiliate rules. Sprinkled throughout the Notice of Proposed Rule Making in the network/affiliate rule review proceeding are questions about the impact that the proposed changes could have on the latest entrants, The

^{23/} *Request of the Christian Broadcasting Network, Inc. for Waiver of Section 73.658(j)(4) of the Commission's Rules*, 87 FCC 2d 1076, 1078 (1981).

^{24/} *Applicability of 47 C.F.R. § 73.658(g) and 47 C.F.R. § 73.658(k) to Home Shopping, Inc.*, 4 FCC Rcd 2422, 2423 (1989) ("Home Shopping").

^{25/} *Home Shopping*, 4 FCC Rcd at 2423.

WB and UPN. ^{26/} For example, the Commission queried whether its prohibition on so-called "time optioning" "might inhibit the growth of new networks." ^{27/} Likewise, in considering whether to eliminate its prohibition on exclusive affiliation, the Commission expressed its concern "that permitting exclusive affiliation in smaller markets might preclude the development of new networks in those markets, thus depriving the public of the benefits of competition and diversity." ^{28/} The Commission's interest in helping, not harming, new networks is clear.

Although the Commission has noted that it is not the FCC's function to assure competitive equality in any given market, it has acknowledged its "duty at least to take such actions as will create greater opportunities for more effective competition among the networks in major markets."

^{29/} If the Freeze Order is waived in this case and if the

^{26/} *Review of the Commission's Regulations Governing Programming Practices and Broadcast Television Networks and Affiliates*, Notice of Proposed Rulemaking, 10 FCC Rcd 11951, 11964-65 (1995) ("Network/Affiliate NPRM").

^{27/} *Id.*

^{28/} *Id.* at 11967.

^{29/} *Television Broadcasters, Inc.*, 4 RR 2d 119, 123 (1965) (Commission granted a short-spacing waiver to an ABC affiliate based largely upon the finding that the
(continued...)

Petitioner is ultimately granted a construction permit for the new station, the Petitioner intends to affiliate with The WB. The Petitioner has an obvious interest, therefore, both as an existing and future affiliate of The WB, in helping the network to succeed. Indeed, even if the license is ultimately awarded to another entity, the public is served by the creation of a new station available for affiliation. Pappas is well aware that the single most difficult impediment for The WB has been finding enough television stations with which it can affiliate to gain the requisite national reach. ^{30/} At best, The WB has been the

29/(...continued)

station had inferior facilities compared to those available to the other national networks in the market, which resulted in a "serious competitive imbalance"), *recon. granted in part on other grounds*, 5 RR 2d 155 (1965). See also *Peninsula Broadcasting Corporation*, 3 RR 2d 243 (1964) (same); *New Orleans Television Corp.*, 23 RR 1113 (1962) (short-spacing waiver granted for the purpose of assuring the existence of a third truly competitive station in the market, thereby making available competitive facilities to the networks).

30/ The WB has, in a variety of proceedings, explained to the Commission that its primary challenge in establishing itself as a nationwide network has been finding a sufficient number of stations with which to affiliate. See, e.g., *Comments and Reply Comments of The Warner Bros. Television Network, Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 (Oct. 30, 1995; Nov. 27, 1995); *Reply Comments of The Warner Bros. Television Network, Reexamination of The Policy Statement in Comparative Broadcast Hearings*, GC Docket (continued...)

fifth, and often the sixth, entrant in those top 100 markets in which it has an affiliate. Coupled with the fact that almost two-thirds of all television markets have only four commercial television stations, the ability of any new network to find affiliates is severely limited.

Waiving the Freeze Order in communities in which The WB has no primary, full-power affiliate will afford the applicant entities the opportunity to build new stations with which The WB can develop a primary affiliation. There is no guarantee, of course, that the Petitioner's application will be granted or that the station will ultimately affiliate with The WB. But whether it is The WB or some other new network that gains an affiliate and thereby strengthens its efforts to obtain a nationwide reach, the public benefits. Quite simply, therefore, a grant of this waiver request will further the significant public interest objective of encouraging the emergence of a new national network or networks.

30/(...continued)

No. 92-52 (Aug. 22, 1994). UPN has expressed similar difficulties in its own efforts to establish a nationwide presence. See Comments of the United Paramount Network, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 at 21-22 (Oct. 30, 1995).

2. Grant of the Requested Waiver Will in Turn Enhance Diversity and Competition in the Local Marketplace

Waiving the Freeze Order in this instance will also inure to the benefit of local viewers. ^{31/} In addition to the reasons unique to the community of Boynton Beach, ^{32/} the Commission has long recognized that network economies of scale enhance the type of programming available to viewers by fostering news-gathering, editorializing, and public affairs programming. ^{33/} As the Commission has noted, "efficiencies that might flow from the stations forming the nucleus of a new network" would "permit the production of new and diverse, including locally produced, programming. ^{34/}

The emergence of the Fox network is illustrative. As the Commission has observed:

^{31/} *Network/Affiliate NPRM*, 10 FCC Rcd at 11955-56 ("Furtherance of diversity and competition remains the cornerstone of Commission regulation").

^{32/} See *supra* at Section II.A.

^{33/} *Multiple Ownership*, 10 FCC 2d at 45.

^{34/} *Review of the Commission's Regulations Governing Television Broadcasting*, 7 FCC Rcd 4111, 4113 (1992).

The emergence of Fox has greatly enhanced source diversity by offering viewers alternative, network-quality prime time programming. It has also bolstered outlet diversity by providing a solid financial base to Fox's affiliates, many of which were formerly marginal independent UHF stations. ^{35/}

Simply stated, television viewers have benefited from the advent of a new network in a number of ways beyond the choice of more network programs. Network programming, after all, is only on the air for a portion of the broadcast day, particularly for new networks. For periods when the stations receive no network feed, the enhanced financial viability of these stations has permitted them to buy higher-cost (and higher-quality) syndicated programming. In addition, many of the stations have been able to add their own locally-produced news and public affairs shows. For example, numerous Fox affiliates now have a 10 p.m. local newscast. ^{36/}

^{35/} *Evaluation of the Syndication and Financial Interest Rules*, 8 FCC Rcd 3282, 3333 (1993); *modified*, 8 FCC Rcd 6736 (1993); *modified*, 10 FCC Rcd 12165 (1995).

^{36/} Approximately 40 percent of Fox affiliates now broadcast a local evening news program. T.L. Stanley, Michael Freeman, "There's No Excuse," *Broadcasting & Cable*, June 10, 1996 at 5.

There is no reason to think that four -- or five -- network affiliates in a market are "enough." The public benefits with each additional source of diversity and competition. Waiving the Freeze Order in the circumstances of this case will achieve these twin goals.

3. Grant of the Requested Waiver Is Supported By the WB's Goal of Increasing the Amount of Educational and Informational Programming Available to Children Nationwide

Even while the Commission is contemplating regulating the amount of educational and informational children's programming that a licensee must air, it can do nothing, of course, to regulate the quality of such programming. The reality is that the newest, smallest stations in a community already have the worst chance of obtaining quality educational programming at an affordable price -- and this is unlikely to change. To ensure that all affiliates of The WB, including any newly-built stations that could result from these series of applications, have high-quality, educational children's programming, The WB will add to its network feed a 30-minute educational children's program each weekday commencing in September, 1997. ^{37/} This production will continue irrespective of

^{37/} This program is in development with Norman Lear.

whether the FCC adopts a quantitative rule with respect to educational children's programming.

In addition, The WB will continue to produce and air top-quality educational and informational interstitials like the "Crazy Careers" segments that it already airs. The WB also will continue to include, in its line-up of entertainment children's programming, shows that incorporate morals and lessons and include segments that have education as a significant purpose. ^{38/} Finally, The WB will continue to air one hour of prime-time family programming, which is specifically designed to include programs that the entire family can watch together. The WB has committed the 8-9 p.m. hour for this purpose, and will continue to do so.

In short, waiving the Freeze Order could help bring The WB's network programming -- including The WB's children's programming -- to the community of Boynton Beach. This, in turn, would increase the amount of programming specifically designed to meet the educational and

38/ Storylines for *Animaniacs* and *Pinky and The Brain*, for example, are often adapted from classical literature or history. *Animaniacs* segments have also portrayed life during different historical periods. In other segments, the *Animaniacs* and *Pinky and The Brain* characters have provided basic introductions to modern scientific principles.

informational needs of children, as well as family programming, available to viewers. Waiving the Freeze Order in order to permit Pappas's Petition for Rule Making to be accepted is therefore in the public interest for this reason as well.

III. GRANT OF THE REQUESTED WAIVER IS NECESSARY AS SOON AS POSSIBLE

A freeze order, by its nature, causes delay. Newly-emerging networks, however, are too fragile to be able to afford delay.

The WB has been on the air for only one-and-a-half years, and has a long, treacherous path to travel before earning a profit. It has been widely reported that an initial investment of approximately \$300 million was necessary for the launch of The WB and that first year losses for the network were in the \$50-\$75 million range.

^{39/} The WB is not expected to break even for four years.

^{39/} David Tobenkin, *New Players Get Ready to Roll: UPN and WB Prepare to Take Their Shots*, Broadcasting & Cable, Jan. 2, 1995, at 30 ("New Players"). The WB's losses for the first quarter of 1996 were \$24 million. Michael Katz, *Time Warner Reports First-Quarter Losses*, Broadcasting & Cable, April 22, 1996 at 55.